

SENATE BILL No. 220

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-5-1.5.

Synopsis: Employment of unauthorized aliens. Prohibits a contractor that enters into a public contract for services from knowingly employing an unauthorized alien. Requires the attorney general to: (1) investigate a complaint that a contractor knowingly employed an unauthorized alien; (2) verify the work authorization of the alleged unauthorized alien with the federal government; (3) notify United States Immigration and Customs Enforcement, local law enforcement agencies, and the appropriate prosecuting attorney of a determination that a contractor has employed an illegal alien; and (4) maintain certain records of violation orders. Provides that a prosecuting attorney notified of the attorney general's determination that a contractor, after December 31, 2008, employed an unauthorized alien is required to file an action against the contractor. Requires a court to: (1) hold a hearing and make a determination of the action on an expedited basis; (2) if the contractor knowingly employs an unauthorized alien, order the contractor to terminate the employment of the unauthorized alien, order the contractor to file a signed affidavit, and place the contractor on probation for three years; (3) order agencies to suspend all licenses held by the contractor for the operation of the business location if the contractor fails to file the sworn affidavit; (4) for a second violation during the probationary period, order agencies to revoke all licenses held by the contractor for the operation of the business location; and (5) send copies of orders to the attorney general. Provides that a court: (1) may suspend a contractor's licenses if the contractor knowingly employs an unauthorized alien; and (2) may consider only the federal government's verification or status information in determining whether an individual is an unauthorized alien. Establishes: (1) a rebuttable
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Effective: January 1, 2009.

Simpson

January 8, 2008, read first time and referred to Committee on Pensions and Labor.



presumption that a contractor did not knowingly employ an unauthorized alien if the contractor verified the employment authorization of an individual through the federal pilot program; and (2) an affirmative defense if the contractor complied in good faith with the federal employment verification requirements. Provides that a public contract for services is void if the contractor providing the services hires or employs unauthorized aliens unless the state or political subdivision determines that voiding the contract would be detrimental to the public interest or public property. Makes it a Class C misdemeanor to knowingly file a false or frivolous allegation with the attorney general.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

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SENATE BILL No. 220

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-5-1.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2009]:

4 **Chapter 1.5. Employment of Unauthorized Aliens**

5 **Sec. 1. As used in this chapter, "agency" means any state or**
6 **local administration, agency, authority, board, bureau,**
7 **commission, committee, council, department, division, institution,**
8 **office, service, or other similar body of government created or**
9 **established by law that issues a license for purposes of operating a**
10 **business in Indiana.**

11 **Sec. 2. As used in this chapter, "contractor" means a person**
12 **that has a public contract for services with a state agency or**
13 **political subdivision.**

14 **Sec. 3. (a) As used in this chapter, "license" means any agency**
15 **permit, certificate, approval, registration, charter, or similar**



1 authorization that is:

2 (1) required by law; and

3 (2) issued by an agency;

4 for purposes of operating a business in Indiana.

5 (b) The term does not include an occupational or professional
6 license.

7 Sec. 4. As used in this chapter, "person" means an individual, a
8 corporation, a limited liability company, a partnership, or another
9 legal entity.

10 Sec. 5. As used in this chapter, "pilot program" means the
11 employment verification pilot program administered by the United
12 States Department of Homeland Security and the Social Security
13 Administration, or the successor of that program.

14 Sec. 6. As used in this chapter, "political subdivision" has the
15 meaning set forth in IC 36-1-2-13.

16 Sec. 7. As used in this chapter, "public contract for services"
17 means any type of agreement, regardless of what the agreement is
18 called, between a state agency or a political subdivision and a
19 contractor for the procurement of services.

20 Sec. 8. As used in this chapter, "state agency" has the meaning
21 set forth in IC 4-6-3-1.

22 Sec. 9. As used in this chapter, "unauthorized alien" has the
23 meaning set forth in 8 U.S.C. 1324a(h)(3).

24 Sec. 10. A contractor that enters into a public contract for
25 services shall not knowingly employ an unauthorized alien.

26 Sec. 11. (a) The attorney general shall investigate a complaint
27 filed with the attorney general that a contractor knowingly
28 employed an unauthorized alien in violation of section 10 of this
29 chapter.

30 (b) In investigating a complaint under subsection (a), the
31 attorney general shall verify the work authorization of the alleged
32 unauthorized alien with the federal government under 8 U.S.C.
33 1373(c).

34 Sec. 12. A state, county, or local official or employee may not
35 attempt to make independently a final determination as to whether
36 an individual is authorized to work in the United States.

37 Sec. 13. If, after an investigation, the attorney general
38 determines that a contractor has employed an unauthorized alien,
39 the attorney general shall notify the following of the unauthorized
40 alien:

41 (1) United States Immigration and Customs Enforcement.

42 (2) Local law enforcement agencies.

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(3) The prosecuting attorney in the county in which the unauthorized alien is employed.

Sec. 14. (a) If a prosecuting attorney receives notification from the attorney general under section 13 of this chapter of a determination that a contractor has employed an unauthorized alien, the prosecuting attorney shall file an action against the contractor for a violation of section 10 of this chapter.

(b) A prosecuting attorney filing an action against a contractor under subsection (a) may file only one (1) action against the contractor relating to the employment of all unauthorized aliens employed by the contractor at the time the prosecuting attorney files the action.

(c) A prosecuting attorney may file an additional action against a contractor under this section for a second or subsequent violation of section 10 of this chapter only for violations allegedly committed by the contractor after the contractor receives notice that the prosecuting attorney has filed the initial action against the contractor under this section.

Sec. 15. If a prosecuting attorney files an action against a contractor under section 14 of this chapter, the court in which the action is filed shall hold a hearing and make a determination of the action on an expedited basis.

Sec. 16. (a) Except as provided in section 18 of this chapter, if a court determines that a contractor knowingly employed an unauthorized alien in violation of section 10 of this chapter, the following apply:

(1) The court shall do the following:

(A) Order the contractor to terminate the employment of all unauthorized aliens employed by the contractor.

(B) Place the contractor on probation for a three (3) year period. During the probationary period, the contractor shall file a quarterly report with the attorney general concerning each new individual the contractor hires at the specific business location where the unauthorized alien worked.

(C) Order the contractor to file a sworn affidavit signed by the contractor with the prosecuting attorney within three (3) business days after the order is issued under clause (A).

The affidavit must include a statement that the contractor:

(i) has terminated the employment of all unauthorized aliens; and

(ii) will not knowingly employ an unauthorized alien.

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(2) The court, after considering the relevant factors listed in subsection (b), may order an agency to suspend, for not more than ten (10) business days, a license described in section 17(a) of this chapter that is held by the contractor.

(b) The court shall consider the following factors, if applicable, in deciding whether to order an agency to suspend a contractor's license under subsection (a)(2):

(1) The number of unauthorized aliens employed by the contractor.

(2) Any prior misconduct by the contractor.

(3) The degree of harm resulting from the violation.

(4) The extent to which the contractor made good faith efforts to comply with any applicable requirements under this chapter.

(5) The duration of the violation.

(6) The role of the directors, officers, or agents of the contractor in the violation.

(7) Any other factors the court considers relevant.

Sec. 17. (a) This section applies to all licenses held by a contractor:

(1) that are necessary to operate the contractor's business at the contractor's business location where an unauthorized alien worked; or

(2) if a license is not necessary at the contractor's business location described in subdivision (1), that are held by the contractor for the contractor's primary place of business.

(b) If a contractor fails to file a sworn affidavit required under section 16(a)(1)(C) of this chapter with the prosecuting attorney within three (3) business days after the order requiring the filing of the affidavit is issued, the court shall order the appropriate agencies to suspend all licenses that are held by the contractor. All licenses suspended under this subsection must remain suspended until the contractor files a sworn affidavit described under section 16(a)(1)(C) of this chapter with the prosecuting attorney.

(c) If the contractor subject to an order under subsection (b) files a sworn affidavit required under section 16(a)(1)(C) of this chapter, the court shall order the appropriate agencies to reinstate the contractor's suspended licenses.

Sec. 18. If:

(1) a court determines that a contractor knowingly employed an unauthorized alien in a second or subsequent violation of section 10 of this chapter; and

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(2) the violation referred to in subdivision (1) occurred during the contractor's period of probation imposed under section 16(a)(1)(B) of this chapter;
the court shall order the appropriate agencies to permanently revoke all licenses held by the contractor that are described in section 17(a) of this chapter.

Sec. 19. (a) If an agency receives an order from a court under section 16(a)(2) or 17(b) of this chapter, the agency shall immediately suspend the license or licenses described in section 17(a) of this chapter that are held by the contractor to which the order relates.

(b) If an agency receives an order from a court under section 18 of this chapter, the agency shall immediately revoke the license or licenses described in section 17(a) of this chapter that are held by the contractor to which the order relates.

Sec. 20. A court shall send copies of all orders issued under sections 16, 17, and 18 of this chapter to the attorney general.

Sec. 21. (a) In determining whether an individual is an unauthorized alien for purposes of this chapter, a court may consider only the federal government's verification or status information provided under 8 U.S.C. 1373(c).

(b) The federal government's verification or status information provided under 8 U.S.C. 1373(c) creates a rebuttable presumption of an individual's lawful status.

(c) The court may:

- (1) take judicial notice of the federal government's verification or status information; and
- (2) request the federal government to provide automated or testimonial verification under 8 U.S.C. 1373(c).

Sec. 22. There is a rebuttable presumption that a contractor did not knowingly employ an unauthorized alien if the contractor verified the employment authorization of an individual through the pilot program.

Sec. 23. A contractor may establish as an affirmative defense against an alleged violation under section 10 of this chapter that the contractor complied in good faith with the requirements of 8 U.S.C. 1324a(b).

Sec. 24. The attorney general shall:

- (1) maintain copies of court orders received under section 20 of this chapter;
- (2) make the court orders available on the attorney general's Internet web site; and

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1 (3) establish and maintain a data base of the names and
 2 addresses of the contractors that have a violation under this
 3 chapter.

4 Sec. 25. This chapter does not require a contractor to take any
 5 action that the contractor believes in good faith would violate
 6 federal law.

7 Sec. 26. After December 31, 2008, a contractor shall verify the
 8 employment eligibility of each employee of the contractor through
 9 the pilot program after hiring the employee.

10 Sec. 27. (a) Except as provided in subsection (b), if a contractor
 11 hires or employs an unauthorized alien, any public contract for
 12 services with that contractor is void.

13 (b) If a contractor hires or employs an unauthorized alien but
 14 the state or political subdivision (whichever the contractor has a
 15 public contract for services with) determines that voiding the
 16 public contract for services under subsection (a) would be
 17 detrimental to the public interest or public property, the state or
 18 political subdivision may allow the public contract for services to
 19 remain in effect until the state or political subdivision hires a new
 20 contractor.

21 Sec. 28. A person who knowingly files a false or frivolous
 22 complaint with the attorney general under section 11 of this
 23 chapter commits a Class C misdemeanor.

24 SECTION 2. [EFFECTIVE JANUARY 1, 2009] A prosecuting
 25 attorney may file an action against a contractor under
 26 IC 22-5-1.5-14, as added by this act, only for a violation of
 27 IC 22-5-1.5-10, as added by this act, that occurs after December 31,
 28 2008.

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